

October 28, 2022

TO: ALL SCHOOL DISTRICTS, COUNTY SUPERINTENDENTS OF SCHOOLS, AND OTHER
INTERESTED PARTIES

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED EMERGENCY REGULATORY ACTION

In accordance with Assembly Bill 1302, Chapter 713, Statutes of 2006, enclosed are proposed emergency regulations adopted by the State Allocation Board (SAB) at its meeting on September 21, 2022. The proposed regulatory amendments, the Finding of Emergency, and two associated forms are attached to this Notice. These documents can also be accessed on the Office of Public School Construction's (OPSC) website at:

<https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations>.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

At its meeting on September 21, 2022, the SAB adopted on an emergency basis proposed regulatory amendments, as well as amendments to two associated forms. Initially, the California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program (Program) was created through Assembly Bill (AB) 1808, Chapter 32, Statutes of 2018, and included a one-time General Fund appropriation in the amount of \$100 million for the sole purpose of providing full-day kindergarten classrooms. Since that time, however, several bills became law that appropriated, rescinded, and re-appropriated general fund dollars to the Program. The latest bill (AB 181, Chapter 52, Statutes of 2022) was signed by the Governor on June 30, 2022, and made \$100 million from the General Fund available to the SAB for apportioning one-time grants to school districts that lack the facilities to provide full-day California preschool, transitional kindergarten and kindergarten programs. In addition to the \$100 million, the Legislature has declared its intent to appropriate an additional \$550 million from the General Fund in the 2023/24 fiscal year to the SAB for the same purposes. The bill expands the Program to include California community colleges to apply for one-time grants for preschool classrooms provided they meet the eligibility criteria.

As noted in the introductory paragraph above, the Finding of Emergency, proposed regulations, and two associated forms are attached to this Notice. These documents may be viewed on OPSC's website at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations>. Copies of the proposed regulations, the two associated forms, and the Finding of Emergency will be mailed to any person requesting this information by using the OPSC contact information set forth below. The proposed regulations implement the Program, under the California Code of Regulations, Title 2, Chapter 3, Subchapter 4, Group 1, State Allocation Board, Subgroup 5.8, Regulations relating to the California Preschool, Transitional Kindergarten, Full-Day Kindergarten Facilities Grant Program.

OPSC, on behalf of the SAB, intends to submit the emergency regulations to the Office of Administrative Law (OAL) in November 2022. The following is an overview of the proposed regulations.

Summary of the Proposed Regulations

A summary of the proposed regulatory amendments, including two associated forms, are as follows:

Existing Regulation Section 1860.2 represents a set of defined words and terms used exclusively for these regulations. These definitions provide clarity to OPSC and school districts on program concepts and requirements. The proposed amendments expand the definition of “School District” by including community college districts that operate a preschool program on behalf of, or in lieu of, a school district or county office of education. This is in alignment with the statute. Two of the Program forms (SAB 70-01 and SAB 70-03) are being revised which changes the revision dates.

Existing Regulation Section 1860.3 sets forth general requirements that all school districts seeking program funding must meet. Specifically, participating school districts are required to complete and file with OPSC the Form SAB 70-01, *Application for Funding*, (which is incorporated by reference), and all required documents as identified in the Specific Instructions section of the Form SAB 70-01. The proposed amendments set forth the statute by which these amendments are being made and sets forth the General Fund appropriation for the expanded Program.

Existing Regulation Section 1860.4 provides general funding guidelines for the program that apply to all applicants that participate in the program. The proposed amendments specify where the funding is being made available [subsection (c) is for the 2022-23 Budget Act and subsection (d) is for the 2023-24 Budget Act] and sets forth the date by which the funding must be encumbered (June 30, 2025 and June 30, 2026, respectively). It is further clarified that any funds returned prior to this date will be returned to the program account, while funds returned after this date will be returned to the General Fund. The encumbered dates of June 30, 2025 and June 30, 2026 are not in statute, but follow State budgeting practices.

Existing Regulation Section 1860.5 sets forth eligibility criteria that school districts must meet in order to apply for full-day kindergarten program funding. The proposed amendments set forth requirements that kindergarten classrooms must meet in order to ensure new construction and/or retrofit funding is used to construct classrooms that match Title 5 requirements.

Existing Regulation Section 1860.5.1 sets forth eligibility criteria that school districts must meet in order to apply for transitional kindergarten program funding. The proposed amendments set forth requirements that kindergarten classrooms must meet in order to ensure new construction and/or retrofit funding is used to construct classrooms that match Title 5 requirements.

Existing Regulation Section 1860.6 sets forth the application submittal process, which established two 30-calendar day funding rounds for school districts to request apportionments of available program funds. The proposed amendments change the fourth funding round in subsection (d) from April 1, 2023 and on or before April 30, 2023 to February 1, 2023 and on or before March 2, 2023. This change allows for additional time to review the applications received because there is \$100 million in General Fund allocations from the 2022-23 Budget Act that will have been appropriated to projects in this filing round.

Existing Regulation Section 1860.14 sets forth criteria for school districts applying for financial hardship, as allowed in Education Code Section 17375(b)(2)(A). If a school district is unable to meet the financial requirements for either all or a portion to match their share of the project with the state and can prove a financial hardship, then they may qualify for hardship assistance pursuant to Education Code Section 17075.10. This Section is identical to the financial hardship provisions as defined in the SFP Regulations. OPSC will review financial records of the school district to determine if the school district qualifies for financial hardship. The analysis will include all capital facility accounts, including but not limited to developer fees, Certificates of Participation, federal grants, bond funds either encumbered, unencumbered or authorized but not sold, etc. Any funds that have not been encumbered, either through contracts or otherwise, will be considered available funds for the matching share. The proposed amendment deletes the language in subsection (a)(4) and specifies that it is a County Superintendent of Schools. This is consistent with Education Code Section 17375(b)(2)(A).

Existing Regulation Section 1860.15 specifies that if the number of Approved Applications received exceeds the funding available for the funding round, then the funding priority will be based on a school district's preference points. Education Code Section 17375(b)(2) states that priority for Program grants will be given to school districts that qualify for financial hardship and/or that have a high population of pupils who are eligible for Free and Reduced Price School Meals (FRPM). This Section creates a system of preference points in order to determine project funding order. A maximum of 80 preference points may be earned in each funding round for each school district. A school district's preference points will be calculated into two categories. Based on a sliding scale currently used in the SFP for the Charter School Facilities Program, a sliding scale was created to determine the percentage of students a school district has eligible for FRPM. Points begin at four points for 60-65 percent of students eligible for FRMP, while 40 points will be earned if 100 percent of students within the school district qualify for FRPM. If a school district has been qualified for financial hardship by OPSC and is unable to contribute a portion or all of its matching share, the school district earns 40 points. The proposed amendments in subsection (b)(1) adds community colleges as part of the funding criteria for the calculation of preference points. This is in alignment with the statute. The stand-alone sentence under subsection (b)(1) has been numbered as (2). This is considered a non-substantive change.

Existing Regulation Section 1860.19 specifies how remaining funding may be used after project completion. Project savings and unexpended funds are different types of remaining funds from Program projects. School districts that are not financial hardship are able to expend their project savings, including interest, that are not needed for the Program project on other high priority capital facility needs of the school district. Any savings not expended within one year of project completion must be returned to the State. School districts that are financial hardship that have any unexpended funds from the Program project, that were not spent on eligible expenditures, and the project was funded from the funding in Section 1860.3(a), must be returned to the State upon completion of the project. Any interest earned on State funds for financial hardship grant funding that is not expended on eligible project expenditures must also be returned to the State to help reduce the financial hardship contribution for that project. A school district is only required to return unexpended funds up to the amount of the financial hardship grant provided by the SAB. The proposed amendment provides that all projects receiving funding under Section 1860.3(b) and 1860.3(c) are not required to return savings, including interest earned on State funds, if expended or encumbered for professional development to build capacity for the implementation of full-day kindergarten programs.

Existing Form SAB 70-01, *Application for Funding*, (which is incorporated by reference) is used by school districts to apply for program funding. The form also serves as a certification from the district regarding compliance with requirements of the law and Program Regulations. School districts must submit this form during the funding rounds described in Regulation Section 1860.6. OPSC will use this form in order to collect the information necessary to calculate the amount of grants applicable to the project and to determine project funding order. The proposed amendments: 1) page 1, under "Specific Instructions" #1.a. A New Construction Grant, fourth and fifth (new) bullets, as well as #1.c. A Retrofit Grant, fourth and fifth (new) bullets are being added as these are documents the SAB requires in order to support the funding of projects and to efficiently administer the Program; and 2) page 2, #2. School Site Enrollment Data, 5th and 7th sentences: adding the "T" before K-12 and the "P" before K-12 refers to Transitional Kindergarten and PreK (preschool).

Existing Form SAB 70-03, *Expenditure Report*, (which is incorporated by reference) is used by school districts to report their project savings and unexpended funds. Expenditure reports must be submitted within one year of final fund release or at the completion of the Program project. A final savings report must be submitted within one year of the completion of the project. Financial hardship projects must submit their unexpended funds at the completion of their project. OPSC will use the information provided on this form to ensure that expenditures made by the school districts for Program projects comply with statute and other applicable State requirements pertaining to construction. The proposed amendments: 1) page 1, 2nd column, last sentence "through OPSC Online or to" was added to inform applicants that document submittals could be submitted electronically through the OPSC Online system; and 2) page 2, #4. the fourth bullet was struck out and relocated as the last bullet.

SUBMISSION OF COMMENTS

Government Code Section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the OAL, the adopting agency provide a Notice of the Proposed Emergency Action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed regulations to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed regulations as set forth in Government Code Section 11349.6.

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, email or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, email or fax must be received at the OAL within five days after the SAB submits the regulations to the OAL for review.

Please reference submitted comments as regarding "Proposed Amendments to the California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program," addressed to:

Reference Attorney

Mailing Address: Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

E-mail Address: staff@oal.ca.gov

Fax No.: (916) 323-6826

For the status of the SAB submittal to the OAL for review, and the end of the five-day written submittal period, please consult the website of 1) the OAL at www.oal.ca.gov under the heading “Emergency Regulations,” and 2) OPSC at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations>, then scroll down to “California Preschool, Transitional Kindergarten and FDK Pending Regulatory Changes.”

Pursuant to Title I, Section 55, please send a copy of written comments regarding the proposed regulatory action, as well as requests for a copy of the proposed regulatory action, and questions concerning the substance of the proposed regulatory action, addressed to:

Lisa Jones, Regulations Coordinator

Mailing Address: Office of Public School Construction
707 Third Street, 4th Floor
West Sacramento, CA 95605

E-mail Address: lisa.jones@dgs.ca.gov

AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Emergency Regulatory Action may be directed to Ms. Lisa Jones at (279) 946-8459. If Ms. Jones is unavailable, these questions may be directed to the backup contact person, Mr. Michael Watanabe, Chief of Administrative Services, at (279) 946-8463.